

NTSB Order No. EA-4189

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of May, 1994

Docket SE-12652

91.12.² We deny the appeal.

The following facts were found by the law judge and are not contested on appeal:

° In 1982, respondent was convicted in Federal court of conspiracy to import and possess with intent to distribute marijuana.

° In 1984, he was convicted in State court of trafficking in cocaine.

° The 1984 conviction was based on respondent's knowing operation in the United States of an aircraft carrying hundreds of pounds of cocaine.

The Administrator's exhibits also show that, on his annual medical application in 1983, respondent checked "no" in response to a question asking for information regarding other-than-traffic convictions. On his annual medical applications in 1987 and 1988, respondent checked the "no" box and also wrote "No change" in the "Remarks" section. On his annual medical application in

²At the relevant times, section 67.20(a)(1) provided:

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part[.]

At the time of the incidents, section 91.12, Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances (now § 91.19), provided, as pertinent:

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

Certificate revocation or suspension for convictions regarding unauthorized carriage of drugs was authorized by 14 C.F.R. 61.15(c).

1989, respondent checked the "yes" box in response to the question asking for information regarding other-than-traffic convictions, but also wrote "No change" in the "Remarks" section.

The law judge rejected respondent's various affirmative defenses regarding the criminal convictions.³ In connection with the §§ 67.20(a)(1) and 91.12 charges, the law judge made specific credibility findings against respondent.

On appeal, respondent repeats arguments made before and rejected by the law judge. Because we find the law judge's October 5, 1992 and November 17, 1992 decisions thoroughly address the issues, we need add little.⁴

Respondent complains that the Administrator waited too long to bring this action. However, as the law judge found, we have held that the only statute of limitations, legal or equitable, that is applicable to these remedial proceedings is our own stale complaint rule. Administrator v. Brown, 4 NTSB 630, 631 (1982).

And that rule does not apply to cases in which a respondent's qualifications have legitimately been placed in issue.

³Respondent had argued, among other things, that the complaint was barred by the statute of limitations, laches, and our stale complaint rule (49 C.F.R. 821.33).

⁴We note that the law judge did not specifically find whether, in violating § 67.20(a)(1), respondent fraudulently completed the application or whether he committed the lesser offense of intentional falsification. Because the law judge failed to make two extra findings required to find fraud (i.e., that the false representation was made with the intent to deceive, and that action was taken in reliance on the representation, see Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976)), we will assume he intended a finding of intentional falsification.

Application of US Jet, NTSB Order EA-3817 (1993).

Respondent also argues, as he did before the law judge, that certificate action for these old convictions violates FAA policy.

To support this claim, respondent cites a memo that the law judge refused to admit into the record (Tr. at 89-90) and we, therefore, grant the Administrator's motion to strike the argument based on this memo.⁵ As a general answer to respondent's claim, we note that we have affirmed certificate revocation in the case of both drug convictions and intentional falsifications on medical applications. See Administrator v. Cassis, 4 NTSB 555 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd, Cassis v. Helms, Admr., FAA, et al, 737 F.2d 545 (6th Cir. 1984), Administrator v. Kolek, 5 NTSB 1437 (1986), aff'd Kolek v. Engen, 869 F.2d 1281 (9th Cir. 1989), and Administrator v. Hernandez, NTSB Order EA-3821 (1993).

With regard to the false answers on his medical applications, respondent reiterates his earlier argument that the medical application is ambiguous. He also claims that the question about other-than-traffic convictions is irrelevant to the issue of his medical qualification. The latter argument is inapposite. The question was posed to respondent and he answered

⁵The memo merely suggests that convictions prior to 1986 should not be included in the project to which the memo is directed. Moreover, the memo does not represent agency policy, but merely the opinion of one FAA staffer and another rejected exhibit (Tr. at 98) indicates that the FAA reserved the right to prosecute old cases.

it; it is no defense now that the question is irrelevant.⁶ And, the law judge properly found that we have rejected the 11th Circuit's conclusion, in United States v. Manapat, 928 F.2d 1097 (11th Cir. 1991), that these conviction questions are ambiguous. See Administrator v. Barghelame and Sue, NTSB Order EA-3430 (1991), and Administrator v. Sue, NTSB Order EA-3877 (1993).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's motion to strike is granted; and

⁶Respondent does not offer the related argument, rejected by us in Administrator v. Johnson, 6 NTSB 720 (1988), that the information sought by the question is not material to the intentional falsification analysis we conduct under Hart, supra (elements of intentional falsification are: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity).

3. The revocation of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.⁷

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).